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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No. 2:20-cr-109-JAD-DJA

Plaintiff,

v.

MYKALAI KONTILAI,
aka MICHAEL CONTILE,

Defendant.

MOTION TO UNSEAL CASE

(Filed Under Seal)

The United States of America, by and through Nicholas A. Trutanich, United States Attorney, Richard Anthony Lopez, Assistant United States Attorney, and Emily Scruggs,

1 Trial Attorney of the Criminal Division, Fraud Section (together the “Government”),
2 hereby moves this Court for an order unsealing the case.

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 1. Defendant Mykalai Kontilai, also known as Michael Contile, was charged by
5 Indictment on June 3, 2020. A warrant issued for his arrest on the same date. The
6 Indictment and warrant were filed under seal pending the defendant’s arrest.

7 2. The Indictment charges the defendant with 18 counts including violations of
8 Securities Fraud (15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240-10b-5), Wire Fraud (18 U.S.C.
9 § 1343), Money Laundering (18 U.S.C. §§ 1956, 1957), and Willful Failure to File Return
10 (26 U.S.C. § 7203).

11 **ARGUMENT**

12 3. Under Federal Rule of Criminal Procedure 6(e)(4), “[t]he federal magistrate
13 to whom an indictment is returned may direct that the indictment be kept secret until the
14 defendant is in custody or has been released pending trial.” “The decision of a magistrate to
15 seal an indictment is entitled to considerable deference.” *United States v. Gigante*, 436 F.
16 Supp. 2d 647, 654 (S.D.N.Y. 2006).

17 4. The “‘obvious purpose’” of the Rule “‘is to prevent the requirement of an
18 indictment from serving as a public notice that would enable the defendant to avoid arrest.’”
19 *United States v. Davis*, 598 F. Supp. 453, 455 (S.D.N.Y. 1984) (quoting *United States v. Muse*,
20 633 F.2d 1041, 1043 (2d Cir. 1980)); *see also United States v. Upton*, 339 F. Supp. 2d 190, 194
21 (D. Mass. 2004) (“Rule 6(e)(4) presumes a governmental objective of preventing pre-arrest
22 flight by the defendant . . .”).

23 5. The Government initially requested the Indictment and warrant be filed under
24 seal. At the time, the Government did not have reason to believe that the defendant was

1 aware of the pending criminal charges against him, although there was reason to believe the
2 defendant had traveled internationally and had considered the possibility of life as a fugitive
3 from justice.

4 6. It appears now the defendant is convinced that he has been formally charged
5 and that an arrest warrant has issued. This belief has kept him from returning to the United
6 States to defend himself in a federal civil proceeding. He is also avoiding travel to countries
7 that he believes may extradite him to the United States.

8 7. The interests of justice weigh in favor of unsealing the Indictment.
9 Publication of the charges may alert individuals at risk of falling victim to any ongoing
10 schemes perpetrated by the defendant, facilitate cooperation with international law
11 enforcement partners to apprehend the defendant, and serve as the basis to potentially stay
12 civil discovery.

13 8. The Government requests that the related sealed docket entries for filings
14 dated June 9, 2020 and June 15, 2020 remain sealed at this time for the reasons stated in
15 those documents.

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CONCLUSION

For the reasons stated above, the Government respectfully requests that this Court grant the Government's motion and unseal the case.

DATED this 13th day of October, 2020.

Respectfully submitted,

DANIEL KAHN
Acting Chief, Fraud Section
U.S. Department of Justice

NICHOLAS A. TRUTANICH
United States Attorney



EMILY C. SCRUGGS
Trial Attorney



RICHARD ANTHONY LOPEZ
Assistant United States Attorney

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ORDER

Based on the Government's Motion to Unseal Case in the above-captioned matter and good cause appearing therefore,

IT IS HEREBY ORDERED that the case and indictment be unsealed;

IT IS FURTHER ORDERED that the Government's Motion to Unseal Case dated October 13, 2020, be unsealed; and

IT IS FURTHER ORDERED that the related sealed docket entries for filings dated June 9, 2020, and June 15, 2020 remain sealed at this time.

DATED this 13th day of October, 2020.



HONRABLE DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE